

Exhibit A

Draft Final Funding and Management Agreement

**Draft Final
11/22/04**

**LOWER COLORADO RIVER
MULTI-SPECIES CONSERVATION PROGRAM**

FUNDING AND MANAGEMENT AGREEMENT

(date to be inserted)

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MULTI-SPECIES CONSERVATION PROGRAM
FUNDING AND MANAGEMENT AGREEMENT**

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**LOWER COLORADO RIVER
MULTI-SPECIES CONSERVATION PROGRAM
FUNDING AND MANAGEMENT AGREEMENT**

1. PARTIES

This Lower Colorado River Multi-Species Conservation Program (LCR MSCP) Funding and Management Agreement (Agreement) is made and entered into by and among the following Parties:

Arizona Parties: The Arizona Department of Water Resources, the Arizona Game and Fish Commission, the Arizona Power Authority, the Central Arizona Water Conservation District, the Yuma Mesa Irrigation and Drainage District, the Yuma Irrigation District, the North Gila Valley Irrigation and Drainage District, the Wellton-Mohawk Irrigation and Drainage District, the Yuma County Water Users Association, the Salt River Project Agricultural Improvement and Power District, and the Mohave County Water Authority;

California Parties: The Coachella Valley Water District, the Colorado River Board of California, the Imperial Irrigation District, the Palo Verde Irrigation District, the San Diego County Water Authority, the Southern California Public Power Authority, Bard Irrigation District, California Department of Fish and Game, and The Metropolitan Water District of Southern California;

Federal Parties: The Bureau of Reclamation (Reclamation), the United States Fish and Wildlife Service (Service), the National Park Service (NPS), the Bureau of Indian Affairs (BIA), and the Bureau of Land Management (BLM), and the Western Area Power Administration (Western).

Nevada Parties: The Colorado River Commission of Nevada, the Nevada Department of Wildlife, Basic Water Company, and the Southern Nevada Water Authority.

2. RECITALS

A. Purposes

The Lower Colorado River Multi-Species Conservation Program is a cooperative effort between Federal and non-federal entities whose purposes are to:

- conserve habitat and work toward the recovery of threatened and endangered species, as well as reduce the likelihood of additional species being listed;
- accommodate present water diversions and power production and optimize opportunities for future water and power development, to the extent consistent with the law; and
- provide the basis for incidental take authorizations.

B. Memorandum of Understanding

In November 1994, the United States, through the U.S. Department of the Interior; the Arizona Department of Water Resources and the Arizona Game and Fish Commission; the Colorado River Board of California and the California Department of Fish and Game; and the Colorado River Commission of Nevada, and the Division of Wildlife of the Nevada State Department of Conservation and Natural Resources entered into a Memorandum of Understanding to create a forum for the consideration of all matters related to the effects of water and power resources development, management, operations, maintenance and replacement, and activities to offset those effects, to endangered, threatened, and candidate species within the historic floodplain of the mainstream of the Colorado River and from the full pool elevation of affected reservoirs (Lakes Mead, Mohave, and Havasu) downstream to the Southerly International Boundary with Mexico.

C. Memorandum of Agreement

On August 2, 1995, the parties to the Memorandum of Understanding entered into a Memorandum of Agreement for Development of a Lower Colorado River Multi-Species Conservation Program, which was clarified in a Memorandum of Clarification,

signed in June 1996, to acknowledge Federal activities within the 100-year floodplain of the lower Colorado River (LCR) which are subject to section 7 consultation under the Endangered Species Act (ESA) and to remove any implication of a guarantee of exemption for the signatories from the requirements of that act.

D. LCR MSCP Agreement

On June 26, 1996, the U.S. Department of the Interior and representatives of the three lower Colorado River basin states of Arizona, California, and Nevada entered into that certain “Lower Colorado River Multi-Species Conservation Program Agreement” by which they agreed, subject to appropriation, to a sharing between Federal Parties and State Parties of the costs of developing the LCR MSCP and implementing certain interim conservation measures during fiscal years 1996 through 1999.

E. Joint Participation Agreement

Effective on or about May 1, 1997, representatives of the U.S. Department of the Interior (on behalf of the Bureau of Land Management, the Bureau of Reclamation, the Fish and Wildlife Service, and the National Park Service) and the three lower Colorado River basin states of Arizona, California, and Nevada entered into that certain “Lower Colorado River Multi-Species Conservation Program Joint Participation Agreement” to jointly develop a Lower Colorado River Multi-Species Conservation Program and to formally establish the Steering Committee and other organizational structures necessary for the development of the LCR MSCP.

F. Cost Sharing Agreement

Effective on or about May 1, 1997, representatives of the three lower Colorado River basin states of Arizona, California, and Nevada entered into that certain “Lower Colorado River Multi-Species Conservation Program Inter-State Cost-Sharing Agreement” to provide funding commitments and arrangements with respect to the non-federal portion of the costs of the Program. That agreement was amended, effective February 15, 2001, to provide additional funding with respect to the non-federal portion of the costs of the Program for fiscal years 2000 through 2002. Funding for development of the LCR MSCP has been extended through the Effective Date of this Agreement.

G. Completion and Approval

The Parties now desire to implement the LCR MSCP over a 50-year period. To that end, the Parties are entering into this Agreement, in order to:

- Provide for the management and implementation of the LCR MSCP,
- Set forth the Federal and non-federal cost share, and
- Provide for Contributions to the LCR MSCP.

3. DEFINITIONS

The capitalized terms used in this Agreement shall have the meaning ascribed to them in this section. To the extent that the definitions incorporate covenants and agreements, such covenants and agreements shall bind the Parties. Terms used in this Agreement and specifically defined in the ESA or in regulations adopted by the Service under the ESA have the same meaning as in the ESA and those implementing regulations, unless this Agreement expressly provides otherwise.

1. **“2001 Biological Opinion”** means that biological opinion issued by the Service on January 12, 2001 entitled “Biological Opinion for Interim Surplus Criteria, Secretarial Implementation Agreements, and Conservation Measures on the Lower Colorado River, Lake Mead to the Southerly International Boundary, Arizona, California, and Nevada.”

2. **“Adaptive Management Program”** means the program of Adaptive Management that will be undertaken by the Parties as part of the Conservation Plan as described in section 5.12 of the HCP.

3. **“Agreement” or “FMA”** means this Funding and Management Agreement.

4. **“BA”** means that biological assessment for the specified Covered Actions and prepared for the LCR MSCP by the Federal Parties and transmitted to the Service on *(date to be inserted)* in accordance with section 7 of the ESA.

5. **“Biological Opinion” or “BO”** means the section 7 biological opinion issued by the Service for the LCR MSCP.
6. **“Budget”** means the Program Implementation Budget of the LCR MSCP.
7. **“Chair”** means the elected Chairperson of the LCR MSCP Steering Committee.
8. **“Commissioner”** means the Commissioner of the Bureau of Reclamation and/or his/her designee.
9. **“Conservation Measure”** means measures identified in Chapter 5 of the HCP for the benefit of the Covered Species including specific activities implemented on an annual basis by the Program Manager or, in appropriate circumstances, other Parties to this Agreement.
10. **“Conservation Plan”** means the Habitat Conservation Plan described in section 11 of the Implementing Agreement.
11. **“Contribution”** means in-kind goods or services approved by the Steering Committee and Program Manager or funds provided to Reclamation to be used in implementing the LCR MSCP.
12. **“Contributor”** means a Party to this Agreement that makes a Contribution.
13. **“Covered Actions”** means those actions described in Chapter 2 of the BA, for which Incidental Take Authorization for Covered Species is sought pursuant to the LCR MSCP.
14. **“Covered Activities”** means those activities described in Chapter 2 of the HCP, for which Incidental Take Authorization for Covered Species is sought pursuant to the LCR MSCP.
15. **“Covered Species”** means those twenty-seven (27) species listed in Table 1-2 of the HCP for which Incidental Take Authorization for Covered Actions and Covered Activities is sought pursuant to the LCR MSCP.

16. **“Days”** means calendar days unless otherwise specified. If the date of performance is on a Saturday, Sunday, or observed state or Federal holiday, the date of performance shall be construed to be the next business day subsequent to the calculated date of performance.

17. **“Dispute”** means a controversy described in section 7 of this Agreement and which is subject to the process for resolution provided in section 7 of this Agreement.

18. **“Effective Date”** means the date on which this Agreement takes effect as provided in section 6.1 of this Agreement.

19. **“EIS/EIR”** means the joint environmental impact statement and environmental impact report issued pursuant to NEPA and the California Environmental Quality Act for the LCR MSCP.

20. **“ESA”** means the Federal Endangered Species Act of 1973, as amended.

21. **“Escrow Account”** means an interest bearing account established by one or more of the State Parties and made available to Reclamation to administer and implement the LCR MSCP.

22. **“Fiscal Year”** means the Federal fiscal year, beginning October 1 of one calendar year and ending September 30 of the following calendar year.

23. **“Habitat Conservation Plan”** or **“HCP”** means the habitat conservation plan prepared by the State Parties pursuant to section 10(a)(1)(B) of the ESA for purposes of the LCR MSCP.

24. **“Implementing Agreement”** or **“IA”** means that certain Lower Colorado River Multi-Species Conservation Program Implementing Agreement between the Federal Parties and the Permittees of the section 10(a) incidental take permit issued by the Service in connection with the LCR MSCP.

25. **“Incidental Take Authorization”** means, collectively, (i) the LCR MSCP section 10(a)(1)(B) incidental take permit and (ii) any incidental take statement issued by the Service as part of a Biological Opinion which authorizes take by Federal agencies pursuant to the LCR MSCP.

26. **“LCR MSCP”** means the Lower Colorado River Multi-Species Conservation Program.
27. **“Member”** means a member of the Steering Committee.
28. **“Participant Group”** means a group of organizations participating in the Steering Committee as described in section 7.3.1 of this Agreement.
29. **“Party”** means an entity that is a signatory to this Agreement. Such entities may be referred to individually as “Party” or collectively as “Parties.”
30. **“Permit”** means the section 10(a)(1)(B) incidental take permit issued by the Service pursuant to the HCP for the LCR MSCP.
31. **“Permittee”** means a non-federal person, firm, or entity that has been authorized to take Covered Species pursuant to the IA and the Permit.
32. **“Program Account”** means a financial account established by Reclamation to manage funding associated with implementation of the LCR MSCP.
33. **“Program Documents”** means the HCP, BA, EIS/EIR, FMA, IA, BO, and the Permit.
34. **“Program Manager”** means an employee of Reclamation whose responsibility it is to plan for and take such actions as may be required to implement the LCR MSCP pursuant to the provisions of this Agreement and the IA.
35. **“Reclamation”** means the United States Bureau of Reclamation.
36. **“Secretary”** means the Secretary of the Interior and/or his/her designee.
37. **“State Parties”** means, collectively, the entities described as an Arizona Party, a California Party, and a Nevada Party.
38. **“Steering Committee”** means the body established by section 7.3 of this Agreement.
39. **“Voting Representative”** means the representative of a Member, designated pursuant to section 7.3.6 of this Agreement, who is authorized to vote and otherwise act in the Member’s behalf on matters before the Steering Committee.

4. PRIORITY OF PROGRAM DOCUMENTS

4.1 Program Documents

The terms of this Agreement and the terms of the other Program Documents are intended by the Parties, and shall be interpreted, to be complementary. In the event of any conflict between the terms of this Agreement and the HCP, BA, or EIS/EIR, the terms of this Agreement will control. In the event of a conflict between the IA and this Agreement, the terms of this Agreement will control.

4.2 Permit Controls

The terms of the Permit and the terms of the other Program Documents are intended by the Parties, and shall be interpreted, to be complementary. In the event of any conflict among the terms of the Permit and other Program Documents, the terms of the Permit will control.

5. PREVIOUS AGREEMENTS SUPERSEDED

This Agreement and the IA are intended to be final and binding agreements among the Parties regarding the LCR MSCP. All other agreements and understandings, written or oral, which have previously been entered into or agreed to by and among the Parties prior hereto regarding the LCR MSCP are superseded by this Agreement and the IA. Notwithstanding the foregoing, nothing in this Agreement or the other Program Documents shall be deemed to supersede any agreement related to the 2001 Biological Opinion and the implementation of the reasonable and prudent measures set forth in the 2001 Biological Opinion.

6. EFFECTIVE DATE AND TERM

6.1 Effective Date

This Agreement shall become effective as of the date the Permit is issued by the Service.

6.2 Term of Agreement

This Agreement shall remain in effect for a term of fifty (50) years from the Effective Date, unless terminated or extended prior to that date.

7. MANAGEMENT AND IMPLEMENTATION

7.1 Management—In General

Management of the LCR MSCP and implementation of its terms and the terms of the Permit and the Biological Opinion shall be the responsibility of Reclamation, which, in consultation with the Steering Committee, will employ a person who shall be designated the Program Manager of the LCR MSCP. Reclamation shall cooperate with and coordinate its management and implementation activities for the LCR MSCP with the Service and the other Members of the Steering Committee.

7.2 Management by Reclamation

7.2.1 Program Manager

The Regional Director of the Lower Colorado Region of Reclamation (Regional Director), in consultation with the Steering Committee, shall appoint a Program Manager, who shall be responsible for operation, management, and implementation of the provisions, terms, and conditions of the Conservation Measures. The Program Manager shall be under the supervision of the Regional Director and shall have an office located within Arizona, California, or Nevada.

7.2.2 Duties of Program Manager

The Program Manager shall take appropriate action to implement the Conservation Plan and Conservation Measures and obligations set forth in this Agreement, consistent with the provisions of the Program Documents, including but not limited to the following:

A. Administer and implement the LCR MSCP in a manner that complies with the requirements of the ESA, other applicable Federal and state laws, and the Program Documents.

B. Direct the preparation of Program implementation schedules and cost estimates, an annual Program Implementation Work Plan and Budget and periodic Contribution payment schedules, and, as necessary, direct the preparation of any changes to these documents.

C. Establish one or more Program Accounts, as deemed necessary and appropriate, for the administration of funds from any Contributor or other participant in the LCR MSCP.

D. Review and discuss with, and attempt to seek a consensus among, Members of the Steering Committee and its subcommittees and work groups, including, without limitation, those matters described in section 7.3.12 of this Agreement, and attempt to resolve any Dispute in accordance with sections 7.3.14 and 7.3.15 of this Agreement.

7.3 Steering Committee

7.3.1 Established

The Parties hereby establish the Lower Colorado River Multi-Species Conservation Program Steering Committee whose initial Members have been divided into seven Participant Groups and are identified as:

1. *The Federal Participant Group:*
 - Bureau of Reclamation
 - Fish and Wildlife Service
 - National Park Service
 - Bureau of Land Management
 - Bureau of Indian Affairs
 - Western Area Power Administration
2. *The Arizona Participant Group:*
 - Arizona Department of Water Resources
 - Arizona Game and Fish Department (implementing entity for Arizona Game and Fish Commission)

- Arizona Power Authority
- Central Arizona Water Conservation District
- Yuma Mesa Irrigation and Drainage District
- Yuma Irrigation District
- North Gila Valley Irrigation and Drainage District
- Salt River Project Agricultural Improvement and Power District
- Wellton-Mohawk Irrigation and Drainage District
- Yuma County Water Users Association
- Mohave County Water Authority

3. *The California Participant Group:*

- Coachella Valley Water District
- Colorado River Board of California
- Bard Water District
- California Department of Fish and Game
- Imperial Irrigation District
- Palo Verde Irrigation District
- San Diego County Water Authority
- Southern California Public Power Authority
- The Metropolitan Water District of Southern California

4. *The Nevada Participant Group:*

- Colorado River Commission of Nevada
- Nevada Department of Wildlife
- Southern Nevada Water Authority
- Colorado River Commission Power Users

5. *The Native American Participant Group:* (Note: Participant Group will be contacted to determine interest in being a member.)

6. *The Conservation Participant Group:* (Note: Participant Group will be contacted to determine interest in being a member.)

7. *The Other Interested Parties Participant Group:* (Note: Participant Group will be contacted to determine interest in being a member.)

Each Member shall be responsible for any costs incurred by Members in attending meetings and functions of the Steering Committee, any of its subcommittees, or its work groups.

7.3.2 Additional Members

The Steering Committee may consist of any number of participating organizations within the seven Participant Groups. The Steering Committee may provide in its by-laws, consistent with the provisions of section 7.3.3, if, when, and how, additional Members may be added to the Steering Committee subject to the following conditions.

A. Members within the Federal Participant Group must be agencies of the Federal government or entities created pursuant to Federal law.

B. Members within the Arizona Participant Group must be Permittees that undertake or implement Covered Activities within the state of Arizona.

C. Members within the California Participant Group must be Permittees that undertake or implement Covered Activities within the state of California.

D. Members within the Nevada Participant Group must be Permittees that undertake or implement Covered Activities within the state of Nevada.

E. Members within the Native American Participant Group must be Native American tribes whose lands are located adjacent to, or who divert water from, the LCR.

F. Members within the Conservation Participant Group must be conservation or environmental organizations having an interest in the LCR.

G. Members within the Other Interested Parties Participant Group must be public or private organizations not described in sections A through F, inclusive, that have an interest in the LCR, and wish to participate in the implementation of the LCR MSCP.

7.3.3 Application for Membership

Any interested public or private entity may apply for membership on the Steering Committee within the appropriate Participant Group, set forth in section 7.3.2 of this Agreement, by submitting a letter of interest to the Chair. The letter must:

- A. Describe the nature of the organization and its interest in the affairs of the LCR MSCP.
- B. Identify the Participant Group within which it wishes to participate.
- C. Identify a contact for the organization or entity.
- D. State that it will abide by the terms of this Agreement and the by-laws of the Steering Committee and regularly attend Steering Committee meetings.

At its next meeting the Steering Committee shall review the application. If the application complies with this section and the by-laws, the Steering Committee shall notify the entity and the Program Manager in writing that the entity may participate in the Program as a Member of the Steering Committee within the Participant Group specified in the Steering Committee's notice. Members shall not be required to be Permittees unless they are a Member of the Arizona, California, or Nevada Participant Groups. Acceptance of a new Member to the Steering Committee shall not constitute that entity's designation as a Permittee.

7.3.4 Suspension or Termination

The Steering Committee may suspend or terminate the membership of any Member if the Steering Committee determines that the Member no longer meets the conditions of eligibility for its Participant Group, or has dissolved, or has violated any provision of this Agreement or the by-laws of the Steering Committee.

7.3.5 Reinstatement

The Steering Committee may reinstate a suspended or terminated membership upon the application of the suspended or terminated Member and satisfaction of the provisions of section 7.3.3 of this Agreement.

7.3.6 Voting Representative

Within thirty (30) Days after the Effective Date of this Agreement or within thirty (30) Days of admission to membership, each Member shall, by written notice to the Program Manager, designate one representative who is authorized to vote and otherwise act in its behalf on matters before the Steering Committee. Each Member may appoint one or more alternates to act as its Voting Representative in the absence of its regular representative.

7.3.7 First Meeting of the Steering Committee and Adoption of By-Laws

The Steering Committee shall convene within sixty (60) Days after the issuance of the Permit. The Program Manager or another representative of Reclamation shall preside over the first meeting of the Steering Committee. At such meeting: 1) the Steering Committee shall elect officers as described in section 7.3.8; and 2) Reclamation shall propose a set of by-laws and/or operating procedures to facilitate execution of this Agreement. Such by-laws and/or operating procedures may only be adopted by a majority vote of the Voting Representatives. Modifications to the by-laws shall be made by majority vote.

7.3.8 Chair and Vice-Chair

At the first meeting of the Steering Committee following the Effective Date of this Agreement, and at its first meeting in each calendar year thereafter, the Steering Committee shall elect from among the Voting Representatives a Chair and a vice-chair who will serve until their successors have been elected and qualified as provided in this section. Any Voting Representative may serve as Chair or vice-chair, but the Chair and the vice-chair must represent Members in different Participant Groups.

7.3.9 Meetings of the Steering Committee

A. The Steering Committee shall meet at least twice in each calendar year and at such other times as called by the Chair or the Program Manager or as otherwise provided in the by-laws.

B. Each meeting of the Steering Committee must be open to the public, and any person attending a Steering Committee meeting may file a written statement, or provide reasonable and timely oral input regarding topics on the meeting agenda. The Steering Committee shall develop appropriate procedures to provide public notice of Steering Committee or subcommittee meetings. Nothing in this Agreement modifies the ability of Parties to this Agreement to conduct confidential discussions subject to applicable provisions of state and Federal law.

C. In order to facilitate the effective work of the Steering Committee, it is anticipated that Members will participate in all Steering Committee meetings in person. In the event that personal participation is not practical for any particular meeting, Voting Representatives of the Steering Committee may participate in a meeting by a telephone conference call at their own expense. A Voting Representative who participates by telephone shall be deemed present for purposes of quorum and voting.

D. The Program Manager shall cause minutes of each meeting of the Steering Committee to be prepared and clearly record each decision of the Steering Committee.

7.3.10 Quorum

A quorum shall be established by the Steering Committee by-laws, but must include Reclamation and at least one Party from the Arizona Participant Group, one Party from the California Participant Group, and one Party from the Nevada Participant Group.

7.3.11 Role of Steering Committee

In addition to those powers and authorities conferred or described elsewhere in this Agreement:

A. The Steering Committee shall work with the Program Manager to coordinate implementation of the LCR MSCP.

B. The Steering Committee may create standing or ad hoc subcommittees or work groups as it deems necessary to carry out its responsibilities under the Program Documents.

C. Except with respect to designating subcommittees and work groups, and except as otherwise provided in this Agreement, the Steering Committee shall have no decision-making authority with respect to the management and administration of the LCR MSCP.

D. As described in section 7.3.12 of this Agreement, the Steering Committee shall review certain matters presented by the Program Manager.

E. The Steering Committee shall appoint one Voting Representative from each of the Arizona, California, and Nevada Participant Groups to represent the interests of Permittees in any relevant consultation, conference, or re-initiation of consultation pursuant to section 7 of the ESA, as provided in sections 8, 9, 15.5 and 15.6 of the IA.

7.3.12 Review by Steering Committee

Prior to taking any action with respect to the following types of matters, the Program Manager shall first present the proposed action to the Steering Committee for its consideration:

A. Annual Implementation Report, Work Plan, and Budget and Contribution payment schedules related to the Program.

B. Additional or modified Conservation Measures proposed pursuant to the Adaptive Management Program.

C. Land and water acquisitions.

D. Reports and responses to Congress and Federal and state regulatory agencies concerning the Program, where practicable.

E. Financial reports and accountings.

7.3.13 Consensus

With respect to those matters that must be presented to the Steering Committee, the Parties intend that every effort should be made to have each such matter approved by a consensus of the Members. Consensus is reached when it becomes evident through deliberation that every Member, at the very least, does not oppose a decision. In its deliberations, the Steering Committee shall use appropriate tools for developing

consensus, and shall seek to exhaust every reasonable and practicable effort to reach consensus.

A. In the absence of a consensus, the Chair shall determine, pursuant to section 7.3.14 of this Agreement, whether there is sufficient opposition to the proposed action to constitute a Dispute. If the Chair determines there is a Dispute, until the dispute resolution process as herein described is completed, or the Dispute is otherwise resolved, the Program Manager shall not implement any action or decision which is the subject of the Dispute.

B. In the absence of a Dispute, the decision of the Program Manager shall be final.

7.3.14 Existence of Dispute

A. A Dispute exists where either, (i) any one of the three State Participant Groups, or (ii) an aggregate of at least six (6) votes, oppose a proposed action of the Program Manager as described in section 7.3.12 of this Agreement. In the event of a Dispute between any of the Federal Parties, representatives of the Federal Parties shall meet to resolve any such difference, as a supplementary approach to the provisions of this Agreement.

B. Each Voting Representative shall have a vote equal to the quotient of a fraction, the denominator of which is the number of Voting Representatives of that Participant Group who are present or participate by telephone and the numerator of which is five (5); provided, however, that no Voting Representative shall have more than one vote.

Voting by proxy is not permitted.

C. A State Participant Group shall be deemed to have opposed a proposed action of the Program Manager as described in section 7.3.12 of this Agreement where a majority of the Voting Representatives within that State Participant Group, present at the meeting, votes against the motion. In addition to the provisions of the preceding sentence, for each such State Participant Group, this method of calculating the dissent of the State Participant Group may be replaced by some other method described in a writing signed by the Voting Representative of each Member within the State

Participant Group and submitted to the Chair and the Program Manager at any time before the vote is taken.

7.3.15 Resolution of Disputes

A. Informal Dispute Process

After a vote of the Steering Committee, the Chair will determine whether a Dispute exists pursuant to the provisions of section 7.3.14 of this Agreement. In the event that a Dispute exists, the informal Dispute process shall be initiated pursuant to this subsection. The dissenting Members, singly or jointly, shall furnish to the Program Manager and each other Member, a written request to initiate the informal Dispute process. This request must, with reasonable specificity, identify the issue(s) in dispute and the relief sought. If such a request is not received by the Program Manager within ten (10) Days after the initial vote that determined the existence of a Dispute, the Dispute shall be deemed to be abandoned.

Any other Member may submit written comments to the Program Manager regarding the Dispute. Once the informal Dispute process is initiated, the Program Manager and the Chair will schedule a Steering Committee meeting to be held no later than thirty (30) Days, after the initial vote, specifically to discuss the issue(s) which are in Dispute. The Program Manager shall work with the Members of the Steering Committee to attempt to resolve the informal Dispute prior to the Steering Committee meeting. In the event that such efforts are not successful, the goal of the Steering Committee meeting is to: (i) resolve the Dispute, or (ii) narrow the issue(s) in dispute so that consensus, as defined in section 7.3.13 of this Agreement, to move forward can be achieved on as many parts as possible of the proposed action under consideration. At this Steering Committee meeting, after an opportunity for full discussion and consideration, the Chair will call for a vote, pursuant to section 7.3.14, to determine if a Dispute still exists. Any continuing Dispute shall be considered a formal Dispute and shall follow procedures of subsection (B) of this section.

B. Formal Dispute Process

Members representing at least six (6) dissenting votes or one (1) dissenting State Participant Group, may appeal the informal Dispute by signing and furnishing to the

Regional Director, the Program Manager, and each other Member, a written request to initiate a formal Dispute. This request must, with reasonable specificity, identify the issue(s) in Dispute, the relief sought, and any supporting documentation. If such a request is not received by the Regional Director within ten (10) Days after the vote that determined the existence of a formal Dispute, the formal Dispute shall be deemed to be abandoned.

Within thirty (30) Days after receiving the request, the Regional Director shall issue a written decision on the Dispute. This decision shall be promptly provided to all Members.

C. Appeal Process

Members representing at least fifteen (15) dissenting votes or one (1) dissenting State Participant Group may appeal the Regional Director's decision, by signing and furnishing to the Secretary, the Regional Director, the Program Manager, and each other Member, a written request. This request must, with reasonable specificity, identify the issue(s) in Dispute, the relief sought, and any supporting documentation. If such a request is not received by the Secretary within fifteen (15) Days after receiving the Regional Director's decision, the Regional Director's decision is final.

The Secretary shall, after appropriate consultation, issue a written determination regarding the Dispute on appeal from the Regional Director. The decision of the Secretary shall be final, subject to consultation with the Administrator of the Western Area Power Administration with respect to a Dispute involving Western.

7.3.16 Reasonable Access

Each Member of the Steering Committee is entitled to monitor the progress and performance of the Program, and shall be allowed reasonable access to data, records, and documents relating to the Program.

7.4 Program Implementation Report, Work Plan, and Budget

7.4.1 Implementation Report, Work Plan, and Budget

Annually, during the term of this Agreement, the Program Manager shall develop and present to the Steering Committee a Program Implementation Report, Work Plan,

and Budget consistent with the Program Documents. The Implementation Report, Work Plan, and Budget shall include:

- A. A current financial report as described in section 7.5.4 of this Agreement.
- B. A description of all Conservation Measures initiated, continued, or completed during the previous year.
- C. A description of all Conservation Measures intended to be initiated or continued during the next three year period.
- D. The purpose for, and the cost estimate of, all Conservation Measures intended to be initiated or continued during the next three year period.
- E. A running tabulation and description of all Conservation Measures which have been completed from the commencement of the LCR MSCP to the date of the report.
- F. A description of any take known to have occurred during the previous budget period.
- G. A running tabulation of habitat created or restored by the Plan.
- H. A description of all findings, conclusions, and results of monitoring, research, or Conservation Measures previously undertaken.
- I. Any recommendation made by the Service or any state wildlife agency regarding the LCR MSCP.
- J. Approval or rejection of any minor modification described in sections 14.1 and 14.2 of the IA.

7.4.2 Service Review

After presentation to the Steering Committee the Program Manager shall submit the Implementation Report, Work Plan, and Budget to the Service for its review and determination regarding the consistency of the past, current, and future implementation plans with the terms of the Conservation Plan and Permit. The submittal shall note any matters in Dispute.

7.4.3 Report by Service

Within sixty (60) Days after receipt of the Implementation Report, Work Plan, and Budget, the Service shall submit its written evaluation to the Program Manager. The evaluation shall include the opinion of the Service regarding the consistency of the Implementation Report, Work Plan, and Budget with the requirements of the Conservation Plan and Permit. In the event the opinion of the Service is that the Implementation Report, Work Plan, and Budget demonstrates that Conservation Measures undertaken or proposed do not comply with the LCR MSCP and its Permit, it shall specify, in detail, in what regard the Implementation Report, Work Plan, and Budget is deficient and shall suggest what alternative measures might be undertaken.

7.4.4 Response by Program Manager

In the event the Service is of the opinion that the Implementation Report, Work Plan, and Budget are not consistent with the requirements of the Conservation Plan or the Permit, the Program Manager shall report the response of the Service to the Steering Committee. Implementation of the Work Plan, other than those aspects that the Service believes do not comply with the Conservation Plan or the Permit, shall proceed. The Program Manager shall attempt to promptly resolve concerns raised by the Service.

7.5 Management of Funds

7.5.1 Accounts

7.5.1.1 Escrow Accounts

The Program Manager will cooperate with the State Parties who will establish one or more interest bearing Escrow Accounts for the deposit of funds contributed by the State Parties that shall be available to Reclamation for administration and implementation of the LCR MSCP. Reclamation will draw funds from the Escrow Account(s) based on escrow instructions of the Contributor(s). Withdrawal of funds from the Escrow Account(s) will be limited to the amounts outlined in the annual Implementation Report, Work Plan, and Budget.

7.5.1.2 Program Accounts

The Program Manager shall establish one or more Program Accounts for the deposit of funds appropriated or contributed for the implementation of the LCR MSCP.

7.5.1.3 Habitat Maintenance Account

The Program Manager shall cooperate with the State Parties who will establish an interest bearing habitat maintenance account for the deposit of funds contributed by the State Parties for habitat maintenance pursuant to section 5.4.2 of the HCP. Interest earned on the habitat maintenance account shall be added to the account for the purpose of implementation of the LCR MSCP; any such interest shall not be credited towards the Contribution of any Party.

7.5.2 Rights in Program Account

No Contributor shall have any right to any funds in the Program Account, other than provided in sections 7.5.6-7.5.7 of this Agreement.

7.5.3 The Share of a Permittee

For the purpose of accounting for each of the Permittees, any amount expended from the Program Account(s) shall be deemed to be comprised of each Permittee's respective proportionate share, except where a Permittee has requested that its Contribution is not to be used to fund a specified undertaking. Notwithstanding this accounting practice, each Permittee shall contribute the full amount of its specified share, and the Program Manager may expend money from the Program Accounts for all costs specified in the Implementation Report, Work Plan, and Budget. Funds in the Program Accounts must be disbursed only in accordance with the Implementation Report, Work Plan, and Budget. Contributions credited pursuant to section 8.6 shall be accounted as expended for undertakings that are in furtherance of measures required under the 2001 BO.

7.5.4 Reports to Steering Committee

As identified in section 7.4.1(A) of this Agreement, the Program Manager shall furnish to the Steering Committee an annual financial report. Financial reports shall include financial Contributions, the approved value of in-kind Contributions received and

the Party credited, if any, as well as funding commitments made and expenditures paid out of the Program Accounts and Program Account balances during the period covered by the report.

7.5.5 Right to Inspect and Audit

The Program Manager is responsible for ensuring the accuracy and reasonableness of all LCR MSCP finances and expenditures. Reclamation shall maintain financial records and accounts for the LCR MSCP in accordance with Federal accounting standards. With reasonable notice, any Contributor is entitled to review or audit, during normal business hours, Reclamation's records and books of any Program Account(s) for the LCR MSCP. Reclamation shall cooperate with any audit pursuant to this Agreement, and shall permit access to the books, records, and accounts as may be reasonably necessary to conduct the audit. Any such audit or review shall be at the sole expense of the Contributor requesting the audit or doing the review. If any audit reveals an exception in the LCR MSCP financial records, and unless there is an unresolved exception, an appropriate adjustment shall be made. If an exception, identified in an audit or review, cannot be resolved by discussions between the Program Manager and the Contributor, the Contributor may request a decision by the Regional Director. The Regional Director shall render a decision on the exception within thirty (30) Days after receipt of the request. The Contributor may appeal the Regional Director's decision to the Commissioner. The Commissioner will render a decision on the appeal within thirty (30) Days of receipt of the appeal. The Commissioner's decision shall be final.

7.5.6 Final Accounting

As soon as possible following the termination of this Agreement, the Program Manager shall promptly make an accurate final accounting to the Parties of Contributions received, all costs incurred by the LCR MSCP, and expenditures paid out of the Program Accounts pursuant to this Agreement.

7.5.7 Return of Funds

Unless required to fund the continued maintenance of any conservation areas which have been restored or created pursuant to the LCR MSCP, unexpended funds

contributed by a Permittee or other Contributor, if any, and any interest earned thereon, remaining after the termination of this Agreement and the payment of all outstanding obligations shall be promptly returned to the Permittee, person, or entity which contributed the funds, in proportion to the amount provided by each of them.

8. COST SHARES AND FINANCING

8.1 Total Cost

The total cost of the LCR MSCP over its 50-year term is Six Hundred Twenty-Six Million Dollars (\$626,000,000) in 2003 dollars.

8.1.1 Inflation Adjustments

For each year of the LCR MSCP, the funding obligations shall be adjusted in accordance with the Inflation Index, which is the arithmetic average of the PPI Inflation Index and the GDPIP Inflation Index, each of which are defined as follows. The PPI Inflation Index is the ratio of the published value for the last month of each Federal Fiscal Year of the program of the Producer Price Index for the Materials and Components for Construction published by the United States Bureau of Labor Statistics, divided by the published value for September 2003. The GDPIP Inflation Index is the ratio of the published value for the last month of each Federal Fiscal Year of the program of the Gross Domestic Product Implicit Price Deflator published by the Bureau of Economic Analysis of the United States Department of Commerce in the Survey of Current Business, divided by the published value for September 2003.

8.2 Federal Cost Share

The Federal Parties shall bear fifty percent (50%) of the total cost. Western will only make Contributions to the cost of the LCR MSCP to the extent that such Contributions are appropriated and are designated as non-reimbursable by Congress, pursuant to applicable Federal law.

8.3 Non-Federal Cost Share

The State Permittees shall bear fifty percent (50%) of the total cost as follows: the California Permittees shall fund fifty percent (50%) of the non-federal cost share, the Nevada Permittees shall fund twenty-five percent (25%) of the non-federal cost share,

and the Arizona Permittees shall fund twenty-five percent (25%) of the non-federal cost share.

8.4 Payment Mechanisms and Terms

Each year during the term of the LCR MSCP, the Permittees of each state shall provide funding for each State's share of the total cost of the LCR MSCP as set forth in Table 7-1 of the HCP and section 8.3 of this Agreement. Such annual funding will be available no later than the beginning of the Fiscal Year, or such later date as the Work Plan and Budget may specify.

8.5 Cost Share Assurances

The Federal Parties agree that the non-federal costs for the LCR MSCP shall not exceed \$313,000,000 in 2003 dollars, and on an annual basis, as set forth in Table 7-1 of the HCP, provided that the non-federal cost share shall be indexed for inflation pursuant to the index formula set forth in section 8.1.1. However, if additional costs of mitigation are incurred as a result of an agreement of the Parties to amend the LCR MSCP to add additional species to the list of Covered Species or to add additional Covered Actions or Covered Activities, such additional costs shall be shared as provided in such amendment.

8.6 2001 Biological Opinion

Reclamation, with support of funding from California agencies, will implement the conservation and mitigation measures identified in the 2001 Biological Opinion for implementing 400,000 acre-feet annually in changes of point of diversion for California's Colorado River Water Use Plan. The LCR MSCP includes the potential extension of the Interim Surplus Guidelines beyond 2016 and the 400,000 acre-feet change in point of diversion as Covered Actions. The implementation of the 2001 Biological Opinion conservation and mitigation measures shall be credited against the requirements of the LCR MSCP in accordance with the HCP, and the budgeted cost of those measures shall be credited to the California Permittees in the amount that each has paid for the cost of implementing these conservation and mitigation measures.

8.7 Additional Cost Sharing Issues

8.7.1 Budget Requests

Each local, state, or Federal entity which has undertaken a responsibility hereunder shall seek adequate funding to allow it to fulfill its responsibility hereunder and pursuant to the terms of the LCR MSCP, to fulfill its obligations to protect habitats and species consistent with statutory obligations imposed by law, to actively participate on the Steering Committee.

8.7.2 Contributions to Non-Federal Cost Share

The Parties recognize that other persons or entities may contribute money to the LCR MSCP on behalf of a Permittee(s) including, but not limited to competitive grants, donations, and matching funds. Such Contributions on behalf of a Permittee will be deposited in an Escrow Account(s), as appropriate, and will be subject to the Permittee's applicable escrow instructions. Upon transfer to the Program Account(s), such funds shall be credited to the share of the relevant Permittee for the purposes of the non-federal cost share.

8.7.3 Other Contributors

The Parties recognize that other persons or entities may contribute money to the LCR MSCP in the form of, for example, competitive grants, donations, and matching funds. Such supplemental Contributions must be deposited in a Program Account, as appropriate, but must be accounted for separately from the Permittee Contributions and must not be credited to the share of any Party pursuant to sections 8.2 and 8.3 of this Agreement. The acceptance of any gift, grant, or matching funds is subject to the approval of the Program Manager. Any gift, grant, or matching funds that are approved as a Contribution to the LCR MSCP may be designated for any specific purpose, and shall be used or expended only for the specific purposes for which the gift, grant, or matching funds were contributed.

8.7.4 In-Kind Goods and Services

The value and credit of in-kind goods and services shall be credited to a Party only to the extent approved by the Program Manager and the Steering Committee.

9. ASSURANCES AND COMMITMENTS

9.1 In General

Each of the Parties affirms, acknowledges, and confirms each of its covenants, representations, agreements, undertakings, commitments, or assurances contained herein, or in the IA, or the Permit and, in addition, makes the following commitments and assurances.

9.2 Implementation Assistance

Each Permittee shall, to the greatest extent practicable, cooperate with Reclamation to ensure that actions required for Conservation Measures including, but not limited to, the purchase, acquisition, or lease of land and water are accomplished. Permittees shall not unreasonably withhold any necessary approvals to accomplish the above listed actions.

9.3 Participation on LCR MSCP Committees

Each of the Parties shall provide staff to serve on LCR MSCP committees, as appropriate, and shall ensure, to the extent possible, staff participation in discussions and meetings with the other Parties to ensure that the implementation of the LCR MSCP is consistent with any findings upon which the Permit is based.

9.4 Each Party Responsible

The financial and other obligations undertaken by each of the Parties shall be severable and the breach or failure to perform of one Party shall not be attributable to any other Party.

9.5 Authority

Each Party represents and warrants for the benefit of every other Party hereto that: (i) the execution of this Agreement has been duly authorized; (ii) no other authorization or approval, whether of governmental bodies or otherwise, will be necessary in order to enable that Party to enter into and comply with the terms of this Agreement; and (iii) the person executing this Agreement on behalf of each Party has the authority to bind that Party.

9.6 Proper Implementation

Each Permittee shall be deemed to be properly implementing the terms of the Permit and this Agreement if it has made its Contributions in accordance with section 8 of this Agreement and is performing those avoidance and minimization measures identified in Chapter 5 of the HCP that are applicable to Covered Activities undertaken by the Permittee.

9.7 Coordination Requirements for Potential Changes in Operations

In the unlikely event that Reclamation or the Service believe that modifications in anticipated water deliveries or modified operating criteria may be necessary to comply with the provisions of the ESA, Reclamation shall as early as practicable, and absent extraordinary conditions, prior to undertaking such modification, notify the Steering Committee in writing of such potential modifications. The Steering Committee shall have the opportunity to consider any such potential modifications and provide input to Reclamation and the Service on the proposed modifications.

9.8 No Costs Passed Through

This Agreement establishes the share of the costs of implementation of the LCR MSCP to be paid by the Permittees. Therefore, no Federal Party may pass through any Federal portion of the cost of the LCR MSCP, nor shall any such Federal cost be treated as a "reimbursable expense" and passed through to the Permittees as a water charge, power charge, or in any other form. Further, Reclamation shall not designate any portion of the Federal cost share as a reimbursable expense to be recovered by Western from the non-Federal Parties to this Agreement, in the form of a power charge or in any other form.

9.9 Potential Increased Cost of Implementation of the LCR MSCP

To the extent that the cost of implementing the LCR MSCP exceeds \$626,000,000 in total, or on an annual basis in excess of the amounts provided in Table 7-1 of the HCP, adjusted for inflation as provided in section 8.1.1, such additional costs shall not cause the non-federal share of the LCR MSCP costs to exceed \$313,000,000, adjusted for inflation, as set forth in section 8.5 of this Agreement. However, if additional costs of

mitigation are incurred as a result of an agreement of the Parties to amend the LCR MSCP to add additional species to the list of Covered Species or to add additional Covered Actions or Covered Activities, such additional costs shall be shared as provided in such amendment.

10. REMEDIES AND ENFORCEMENT

10.1 In General

The Parties agree to work together in good faith to resolve disagreements using informal meetings and conferences to reach mutually satisfactory conclusions to matters in dispute.

10.2 Enforcement of Agreement and Remedies for Breach

Except as provided in section 10.2 of this Agreement, each Party shall be entitled to pursue legal action, including the filing of a suit for specific performance, declaratory relief, or injunctive relief to enforce and seek remedies for any breach of applicable provisions of the Program Documents, including access to Federal courts under the Administrative Procedure Act (5 U.S.C. § 702 *et seq.*).

10.3 No Monetary Damages, Effect of Agreement on Pre-Existing Liabilities, and Enforcement Authority of the Service

10.3.1 No Monetary Damages

No Party shall be liable in monetary damages to any other Party or other person for any breach of this Agreement or the IA, any performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement, or any other cause of action arising under this Agreement.

10.3.2 Retention of Liability

Each Party shall retain whatever liability it would otherwise possess for its present or future acts or failure to act in the absence of this Agreement.

10.3.3 Landowner Liability

All Parties shall retain whatever liability they would possess as an owner of interests in land in the absence of this Agreement.

10.3.4 Enforcement Authority of the Service

Nothing contained in this Agreement is intended to limit the authority of the Service to seek civil or criminal penalties or otherwise fulfill its enforcement responsibilities under the ESA and other applicable laws. However, as long as the HCP is being properly implemented in accordance with the Program Documents, the Service shall not seek civil or criminal penalties or otherwise enforce the take prohibitions of the ESA and other applicable laws for incidental take of Covered Species that is in accordance with the terms of the Incidental Take Authorization.

11. MISCELLANEOUS PROVISIONS

11.1 Response Times

The Parties agree that time is of the essence in performance of the obligations of this Agreement. Except as otherwise set forth herein or as required by applicable laws or regulations, the Parties shall use reasonable efforts to respond to written requests within forty-five (45) Days.

11.2 No Partnership

Except as otherwise expressly set forth herein, neither this Agreement, nor any other Program Document shall make, or be deemed to make, any Party to this Agreement the agent for, or the partner or joint venture of, any other Party.

11.3 Nullification of Agreement

In the event that the Permit is revoked, or substantially modified without the consent of the Parties, this Agreement shall be null and void and, in such event, no Party shall be bound by its terms.

11.4 Notices

Any notice required by this Agreement shall be in writing, and either delivered personally, or by United States mail, postage prepaid, or by facsimile or other electronic

means to the addresses on file with the Program Manager.

11.5 Preparation By All Parties

This Agreement shall not be construed as if it had been prepared by any one Party, but rather as if all Parties had prepared the Agreement.

11.6 Applicable Law

With respect to ESA, other environmental laws, and other applicable Federal laws, the laws of the United States shall govern the construction and interpretation of this Agreement. With respect to state laws pertaining to the State Parties, the laws of their respective States shall govern the construction and interpretation of this Agreement. Further, nothing in this Agreement shall require any Party to: 1) violate any Federal statute or regulation, or 2) exceed its legal authority, as defined by applicable statute, regulation, rule, or order lawfully promulgated.

11.7 Assignment or Transfer

This Agreement shall be binding on and inure to the benefit of the Parties, the Permittees and their respective successors and assigns, including Third Parties Authorized to Take as defined in the Implementing Agreement. Assignment or other transfer of the Permit or any rights or authorities granted thereunder shall be governed by ESA permit regulations.

11.8 Attorneys' Fees

If any action at law or equity, including any action for declaratory relief is brought to enforce or interpret the provisions of this Agreement, each Party to the litigation shall bear its own attorneys' fees and costs, provided that attorneys' fees and costs recoverable by or against the United States shall be governed by applicable Federal law.

11.9 Elected Officials Not to Benefit

No member of, or delegate to, the United States Congress or the governing body of any of the Permittees shall be entitled to any share or part of this Agreement or to any benefit that may arise from it, except as a holder of an Incidental Take Authorization.

11.10 Availability of Funds

Implementation of this Agreement and the LCR MSCP by the Parties is subject to the requirements of the Anti-Deficiency Act, the laws of the States of Arizona, California, and Nevada, respectively, and the availability of appropriated funds.

11.11 Duplicate Originals

This Agreement may be executed in any number of duplicate originals. A complete original of this Agreement shall be maintained in the official records of each of the Parties hereto.

11.12 No Third Party Beneficiaries

Without limiting the applicability of rights granted to the public pursuant to the ESA or other applicable law, and except as specifically provided in section 16.1 of the IA with respect to Third Parties Authorized to Take, this Agreement shall not create any right or interest in the public, or any member thereof, as a third party beneficiary hereof, nor shall it authorize anyone not a Party to this Agreement to maintain a suit under the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third party beneficiaries shall remain as imposed under applicable provisions of state and Federal law.

11.13 Severability

If any part or provision of this Agreement shall be held invalid or unenforceable by a court having jurisdiction under applicable law, said part or provision shall be ineffective only to the extent of such invalidity without in any way affecting the remaining parts of said part or provision or the remaining provisions of the Agreement. Notwithstanding the foregoing, in the event such invalidity or any rescission pursuant to this section alters the relative balance of benefits of the Parties to the significant disadvantage of a Party, the Parties shall attempt to negotiate a modification of the terms of the Agreement in order to reestablish the original balance of benefits, and if such agreement is not reached, the disadvantaged Party may rescind the Agreement.

11.14 Headings

The section headings used in this Agreement are for the convenience of the Parties and are not intended to be used as an aid to interpretation.

11.15 Further Instruments

Each of the Parties shall, promptly upon the request of another Party, execute, acknowledge, and deliver to the other any and all further instruments as are reasonably requested or appropriate to evidence or give effect to the provisions of this Agreement.

11.16 Force Majeure

If the Permittees are wholly or partially prevented from performing obligations under this Agreement because of unforeseeable causes beyond the reasonable control of and without the fault or negligence of the Permittees (Force Majeure), including, but not limited to, acts of God, labor disputes, sudden actions of the elements, or actions of non-participating Federal or state agencies or local jurisdictions, the Permittees shall be excused from whatever performance is affected by such unforeseeable cause to the extent so affected, and such failure to perform shall not be considered a material violation or breach, provided that nothing in this section 11.16 shall be deemed to authorize any Party to violate the ESA and provided further that: (i) the suspension of performance is of no greater scope and no longer duration than is required by the Force Majeure; (ii) within fifteen (15) Days after the occurrence of the Force Majeure, affected Permittees shall give the Service written notice describing the particulars of the occurrence; and (iii) Permittees use their best efforts to remedy their inability to perform (however, this section shall not require the settlement of any strike, walk-out, lock-out, or other labor dispute on terms which in the sole judgment of the Permittees are contrary to their interest).

11.17 No Waiver

Neither approval of the LCR MSCP nor execution of this Agreement by a Party shall be construed, considered, or deemed to be a waiver of the right to any action, claim, cause of action or defense available to that Party prior to the execution hereof.

11.18 No Admission

Neither the application for the Permit nor the execution of this Agreement or any other Program Document by the Permittees shall be construed, considered, or deemed to be an admission by the Permittees that any take of any listed species has occurred or will occur.

11.19 Faxed Signatures

Any Party may deliver its signed duplicate of this Agreement to any other Party by facsimile transmission, and such delivery shall be deemed made and completed upon receipt of such facsimile transmission by the other Party. Any Party delivering a signed duplicate by facsimile transmission shall promptly send the duplicate original bearing its original signature to the other Party, provided that a delay or failure to do so shall not negate the effectiveness of the delivery made by the facsimile transmission.

11.20 Amendment to Funding and Management Agreement

This Agreement may be amended only by a writing executed by each of the Parties.

THIS AGREEMENT HAS BEEN EXECUTED ON THE DATE(S) SET FORTH NEXT TO EACH SIGNATURE AND SHALL BECOME EFFECTIVE ON THE EFFECTIVE DATE AS DEFINED HEREIN.

Signature pages to follow when this Agreement is finalized.